

83-104-I

THE STATE OF NEW HAMPSHIRE

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THE ATTORNEY GENERAL

STATE HOUSE ANNEX

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August 31, 1983

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Mr. Richard Jordan, Jr.
Energy Coordinator
Division of Human Resources
11 Depot Street
Concord, New Hampshire 03301

Dear Mr. Jordan:

By letter dated August 17, 1983, you requested an opinion concerning two proposed guidelines for eligibility under the Low Income Home Energy Assistance Block Grant. It is our opinion that any eligibility guideline you propose which is not discriminatory and which only authorizes grants to households with incomes which do not exceed the greater of an amount equal to 150 percent of the New Hampshire poverty level or 60 percent of the New Hampshire median income is acceptable.

In order to qualify for energy assistance block grants, the chief executive officer of a state must give certain assurances to the federal government. One of those assurances is that payments made under the Low Income Home Energy Assistance program will only be made to "households with incomes which do not exceed the greater of -- (i) an amount equal to 150 percent of the poverty level for such state; or (ii) an amount equal to 60 percent of the State median income ..." 42 U.S.C. §8624(b)(2)(B). When you are establishing eligibility guidelines, you must therefore make sure that they do not authorize any payments to households that exceed the limitations cited above.

The only other statutory provision concerning income eligibility guidelines, 42 U.S.C. §8624(j), states:



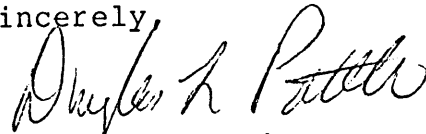
"In verifying income eligibility for purposes of subsection (b)(2)(B) of this section, the State may apply procedures and policies consistent with procedures and policies used by the State agency administering programs under [various federal assistance programs] or under other income assistance or service programs (as determined by the State)." (emphasis added)

The states are thus given considerable discretion to establish eligibility guidelines for energy assistance. The applicable federal regulations support this view. 45 C.F.R. §96.50(3) provides that "the states are primarily responsible for interpreting the governing statutory provisions ..." and that the federal government "will defer to a State's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous."

In the guidelines you have asked us to review, you propose to deduct certain tax and social security withholdings in order to arrive at the amount of income for eligibility determination. You also propose to allow a single or two-person household with at least one person who is 60 years of age or older to add a fictitious person to the household size in determining eligibility. For each of these guidelines, the determination to be made is whether its use would authorize payments to a particular household which are above the greater of the poverty level or median income figures cited above. If you are certain that these proposed guidelines would not authorize such payments, then we see no problem with adopting the guidelines.

I trust this has answered your question. Please let us know if you require anything further.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

DLP:ab

cc: Ms. Tess Petix, Director
Division of Human Resources
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